

meaning to encompass much more than simply what transpires within the four walls of the grand jury room. The coverage of the Rule "includes not only has occurred and what is occurring, but also what is likely to occur. Encompassed within the rule of secrecy are the 'identities of witnesses or jurors, the substance of testimony' as well as actual transcripts, 'the strategy or direction of the investigation, the deliberations or questions of jurors, and the like.'" (Emphasis added.) Your public statements in January and February accurately state the law, but your statements to Mr. Brill do not, and the actions of your Office are in violation of the law.

The media leaks by your Office also violate the ethics rules for federal prosecutors, see, e.g., DOJ Manual §§1-7.510; 1-7.530, which under the Independent Counsel Act you are obligated to comply with unless to do so would be "inconsistent with the purposes" of the Act. Complying with the DOJ's anti-leaking guidelines could hardly be "inconsistent" with the mission of your office.

Sincerely,

DAVID E. KENDALL.

A TRIBUTE TO DR. JAMES TOBIN

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 23, 1998

Mr. STUPAK. Mr. Speaker, at the age of 74, when most men and women might consider that it's time to settle back and enjoy the benefits of retirement, a medical doctor in my district has signed a four-year contract with his local hospital, Bell Memorial Hospital in Ishpeming, Michigan. This extension means that Dr. James Tobin, who also serves as mayor of his home town of Ishpeming, has now begun his second half-century of practicing medicine.

Actually, it's been more than a half century. The son of a doctor who himself practiced medicine until he was 79, Dr. Tobin admitted to a reporter in a recent story in the Marquette Mining Journal that he delivered his first baby in 1947 while only a medical student. Now, 9,000 babies later, Dr. Tobin still conducts his family practice, including obstetrics and gynecology, performs general surgery, and puts in by his own admission about 60 hours of work a week.

His biography recounts the facts of his life and career. A native of the borough of Queens, New York. A 1948 graduate of the Long Island College of Medicine. A 10-year veteran of the U.S. Army Medical Corps. A resident of Marquette County in my Northern Michigan congressional district since 1962. A member of the Ishpeming city council and four times mayor of Ishpeming. An Ishpeming Chamber of Commerce member and former chamber president. Member of a variety of local, state and national medical societies. A visionary chairman of a Michigan governor's task force whose work helped advance the quality of neonatal care at Marquette General Hospital. Church member. Husband. Father of five girls and one boy. Grieving father of a college-age daughter killed in a tragic automobile accident only last December.

This biographical outline can give us a sketch of Dr. Tobin as a member of his community, but it cannot come close to painting a picture of the impact of a family doctor on

those around him. In a lifetime of family medical practice, Dr. Tobin has shared intimately in the lives of thousands and thousands of his friends and neighbors, an involvement rich in the pageantry of life and death. In addition to his human drama, Dr. Tobin in the past 50 years has witnessed a revolution in medicine akin to the revolutions in other branches of science.

Advances in life-saving equipment, medicine and techniques, however, has not come without a trade-off in the way medicine is practiced, as Dr. Tobin frankly admits. Working without the benefit of CAT scans or Ultrasound, doctors once had to more carefully hone their skills of observation. "Your eyes, your fingertips, all of your senses," all came into necessary play, he says, adding, perhaps most importantly, "you had to listen to your patients, too."

We must go beyond the biographical outline, as well, to get a better view of a genuine human being concerned about the health of all individuals in his community. As the Mining Journal stated, Dr. Tobin has tried to follow in his father's footsteps, assuring all those patients who come into his office that they will be treated. "Dad took care of rich and poor alike," Dr. Tobin says in fond recollection. "Nobody ever got turned away for lack of money."

Mr. Speaker, the people of northern Michigan will officially recognize and celebrate this lifetime of dedication—this story for which the final chapters have not yet been written—at a special gathering on June 30. I ask all my colleagues in the U.S. House to join me in praising the selfless commitment of Dr. James Tobin to the health and well-being of his fellow man.

JAMES H. BAKER—A MAN OF HISTORY

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 23, 1998

Mr. BARCIA. Mr. Speaker, in each of our communities we have the legacy of historic figures who worked to make a difference. In my district and my home town of Bay City, we have the privilege of having been the home of James Baker, the first black to run for a statewide public office in Michigan. His candidacy was one hundred years ago this month, and is a point of history of importance to all Americans.

Les Arndt has written an informative review of James Baker in the June 1998 issue of *Wonderful Times*, I submit this article to be included in the RECORD as part of my statement. I commend Mr. Arndt's column to all of our colleagues.

[From the *Wonderful Times*, June 1998]

MEMORY LANE

(By Les Arndt)

On June 21, 1898, exactly 100 years ago this month, the People's Party convention in Grand Rapids nominated Bay Cityan James H. Baker for state land commissioner by acclamation, and he became the first black to run for a statewide public office in Michigan.

Baker campaigned throughout Michigan, and excerpts from one of his campaign posters, paid for by the Committee to Elect

James H. Baker, on October 12, 1898, read as follows: "To the colored citizens and other voters of Michigan: Whereas the People's Party was the first to recognize a colored man on the same ticket, therefore we ask your individual support for James H. Baker. We know he is worthy and well qualified to fill the position and recommend him for your consideration. We beg you to advocate his cause, not for him alone, for he is paving the way for others."

Bay City was newly chartered when James H. Baker came here in 1867 to make his permanent home and become the keystone to Bay City's black community, after he was mustered out of the First Michigan Infantry as an orderly to General Ely and meritorious service with a black Pennsylvania regiment during several major Civil War campaigns.

The city was still in its infancy, electing a prominent lumberman, Nathan B. Bradley, as mayor only two years previously in the historic first election under city charter, which was held seven days before the end of the Civil War.

When James H. Baker came here in the 1860s, he found only six blacks residing in Bay City. He became a dominant figure not only among fellow blacks but also as a community leader. He became a barber, then policeman, and finally the proud owner of the New Crescent Lunch Counter and Ladies' Dining Room at 805 N. Water, which he boasted as "serving no alcoholic drinks."

He was a delegate to the First Colored Men's State Convention at Battle Creek, March 25, 1884; a member of a committee of Michigan Negroes who petitioned the state lawmakers "for the right of suffrage" and avid backer to a movement to send a black delegate-at-large to the Republican National Convention in Chicago in the late 1880s.

Baker was born in Manchester, Va., where his father, also James H., landed after emigrating from Ireland. A son, Oscar W., was born here in August 1879, and he was scarcely six years old when he was struck by a Pere Marquette Railway train at the 11th and Jefferson crossing and eventually lost a leg. That unfortunate accident launched the Bakers' longtime connection with the law.

The father brought suit in young Oscar's name and won a \$5,000 judgment. Although bad investments contributed to the dissipation of the cash before Oscar was 21, he went to the University of Michigan Law School with monies earned as secretary to Michigan Lt. Gov. Orin W. Robinson.

Graduating from law school in 1902, Oscar began practice here with white lawyer Lee E. Joslyn. In 1906, he brought suit against the railroad on the grounds it had been a mistake to pay the \$5,000 without securing a bond from his father. After winning in Circuit Court here, the Michigan Supreme Court ruled against him, holding that payment of the \$5,000 to the attorneys who were to turn it over to the Bakers qualified as a valid procedure.

As a result of the case, insurance companies, railroads, etc. began to require that a guardian be appointed for minors in civil cases.

Oscar, Sr. was the city's first black attorney, and he became a master courtroom psychologist, especially in criminal cases. He served as director for the association which sponsored professional baseball here at the turn of the century.

James H. Baker's grandsons, Oscar J. and James W., were long-time attorneys here, with the former founding what today is the Baker & Selby law firm after graduation from the U-M Law School in 1935. After practicing for nearly a half-century, Oscar Jr. has retired. In 1937, he was chairman of the State Bar's legal redress committee, traveling the state in helping blacks acquire their rights.

In the mid-1960s Oscar Jr. joined the National Lawyer's Guild voting rights promotion in Mississippi for two consecutive summers, participating in civil rights marches. He also participated in civil rights protests in Detroit.

THE WIPO COPYRIGHT TREATIES IMPLEMENTATION ACT

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 23, 1998

Mr. COBLE. Mr. Speaker, I submit for the RECORD a copy of correspondence between myself and Congressmen BOUCHER and CAMPBELL on the WIPO Copyright Treaties Implementation Act.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 16, 1998.

Hon. TOM CAMPBELL,
U.S. Representative for the 15th District of California, Washington, DC.

Hon. RICK BOUCHER,
U.S. Representative for the 9th District of Virginia, Washington, DC.

DEAR TOM AND RICK: Thank you for visiting with me in my office recently regarding H.R. 2281, the "WIPO Copyright Treaties Implementation Act." I appreciate the concerns you expressed with respect to H.R. 2281 as it was reported from the House Committee on the Judiciary.

I expressed to you that I would consider your thoughts and respond to you in detail, and am pleased to do so in this letter.

I believe that many of your concerns, which are enumerated in your substitute bill, H.R. 3048, have been addressed already in a reasonable manner in amendments to the bill adopted by the Subcommittee on Courts and Intellectual Property and the Committee on the Judiciary in the House and by the Committee on the Judiciary and on the floor in the Senate (regarding the Senate companion bill, S. 2037). Others have been addressed in legislative history in House Report 105-551 (Part I) which accompanies the bill, as well as in Senate Report 105-190, which accompanies the Senate companion bill. Still others may be addressed as the House Committee on Commerce exercises its sequential jurisdiction over limited portions of the bill and as I work with interested members on developing a manager's amendment to be considered by the whole House. I anticipate including many of the amendments made by the Senate in the manager's amendment, along with other provisions. I anticipate that a conference will be necessary to reconcile the House and Senate versions of the bills.

While I am unable to support the specific provisions of H.R. 3048, for reasons I will explain in this letter, I am willing to work with you in the coming weeks to address additional concerns regarding the impact of this legislation on the application of the "fair use" doctrine in the digital environment and on the consumer electronics industry. I wish to stress, however, that I believe the bill, as amended by the House and Senate thus far, and explained by both the House and the Senate Judiciary Committee reports, already addresses these issues in several constructive ways.

I believe it is important, in order to recognize properly the efforts undertaken by the Congress and the Administration to address the concerns of the consumer electronics and fair use communities, to review the history

of H.R. 2281 and to evaluate all of the provisions that have been either added to or deleted from the bill since its development leading to introduction in this Congress. As I am sure you will appreciate, I am sensitive to your concerns and have worked diligently with members and all parties involved to create a balanced and fair proposal that will result in the enactment of legislation this Congress.

In February, 1993, the Administration formed the Information Infrastructure Task Force to implement Administration policies regarding the emergence of the Internet and other digital technologies. This task force formed a Working Group on Intellectual Property Rights to investigate and report on the effect of this new technology on copyright and other rights and to recommend any changes in law or policy. The working group held a public hearing in November, 1993, at which 30 witnesses testified. These witnesses represented the views of copyright owners, libraries and archives, educators, and other interested parties. The working group also solicited written comments and received over 70 statements during a public comment period. Based on oral and written testimony, the working group released a "Green Paper" on July 7, 1994. After releasing the Green Paper, the working group again heard testimony from the public through four days of hearings held around the country. More than 1,500 pages of written testimony were filed during a four-month comment period by more than 150 individuals and organizations.

In March, 1995, then-Chairman Carlos Moorhead solicited informal comments from parties who had submitted testimony regarding the Green Paper, including library and university groups, and computer and electronics groups, in order to work effectively with the Administration on jointly developing any proposed updates to U.S. copyright law that might be necessary in light of emerging technologies.

In summer, 1995, the working group released a "White Paper" based on the oral and written testimony it has received after releasing the Green Paper. The White Paper contained legislative recommendations which were developed from public comment in conjunction with consultation between the House and Senate Judiciary Committees, the Copyright Office and the Administration.

In September, 1995, Chairman Moorhead in the House and Chairman Hatch in the Senate introduced legislation which embodied the recommendations contained in the White Paper and held a joint hearing on November 15, 1995. Testimony was received from the Administration, the World Intellectual Property Organization and the Copyright Office. The House Subcommittee on Courts and Intellectual Property held two days of further hearings in February, 1996. Testimony was received from copyright owners, libraries and archives, educators and other interested parties. In May, 1996, the Senate Judiciary Committee held a further hearing. Testimony was received from copyright owners, libraries and other interested parties. These hearings were supplemented with negotiations in both bodies led by Representative Goodlatte (as authorized by Chairman Moorhead) in the House and by Chairman Hatch in the Senate. Further negotiations were held by the Administration in late summer and fall of 1996.

During consideration of the "NII Copyright Protection Act of 1995," Chairman Moorhead requested that Mr. Boucher and Mr. Berman of California lead negotiations between interested parties regarding the issue of circumvention. While these negotiations were helpful in streamlining and clarifying the issues to be discussed, they ultimately did not result in an agreement.

It is important to note that shortly after its establishment, the Administration task force's working group convened, as part of its consideration, a Conference on Fair Use (CONFU) to explore the effect of digital technologies on the doctrine of fair use, and to develop guidelines for uses of works by libraries and educators. Because of the complexities involved in developing broad-based policies for the adaptation of the fair use doctrine to the digital environment, and due to much disagreement among the participants (including within the library and educational communities), CONFU did not issue its full report until nearly two years after it was convened. An Interim Report was released by CONFU in September 1997 on the first phase of its work. No consensus was reached on how to apply the fair use doctrine to the digital age. In fact, the CONFU working group on interlibrary loan and document delivery concluded in a report to its Chair that it is "premature to draft guidelines for digital transmission of digital documents." The work of CONFU continues today and a final report should be released soon with no agreed conclusions. As you can see, developing sweeping legislation, rather than relying on court-based "case or controversy" applications of the doctrine, is exceedingly difficult to do.

Since before the debate began with the establishment of a task force in the United States in 1993, the international community had also been considering what updates should be made to the Berne Convention on Artistic and Literary Works in order to provide adequate and balanced protection to copyrighted works in the digital age. This culminated in a Diplomatic Conference hosted by the World Intellectual Property Organization at which over 150 countries agreed on changes needed to accomplish this goal.

This goal was not reached easily, however, and many of the issues being debated by the Administration and the Congress in the United States concerning fair use and circumvention were aired at the Diplomatic Conference, with significant changes made to accommodate fair use concerns and the effect on the consumer electronic industries. Representatives of both groups participated in the Conference and aggressively sought to maintain proper limitations on copyright. They succeeded. For example, language was added to ensure that exceptions such as fair use could be extended into the digital environment. The treaty also originally contained very specific language regarding obligations to outlaw circumvention. It was changed to state that all member countries "shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty." This left to each country the development of domestic legislation to accomplish this goal.

After the United States signed the WIPO Treaties, the Administration again began negotiations led by the Department of Commerce and the Patent and Trademark Office, in consultation with the Copyright Office and the Congress, to develop domestic implementing legislation for the treaties. It built upon the efforts already accomplished by the release of the Green Paper and the White Paper and all of the testimony and comments heard as part of that process, the House and Senate bills introduced in the 104th Congress and all of the hearing testimony and negotiations associated with them, and the negotiations held by the Administration leading up to and during the Diplomatic Conference. Again, comments were solicited from fair use and consumer